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11 UNITED STATES DISTRICT COURT
12 DISTRICT OF NEVADA
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14 ENVTECH, INC.,) 3:11-cv-00523-HDM-WGC
15 Plaintiff,)
16 vs.) ORDER
17 TALMOR SUCHARD, SENTRO)
18 TECHNOLOGIES, LTD, and SENTRO)
19 TECHNOLOGIES, LLC,)
20 Defendants.)
_____)

21 Plaintiff EnvTech ("EnvTech") has filed an amended complaint
22 asserting multiple claims against defendants Talmor Suchard
23 ("Suchard"), Sentro Technologies LTD, and Sentro Technologies, LLC
24 ("Sentro Nevada"). Plaintiff has also filed a motion for
25 preliminary injunction (#47), proposed interim injunctive relief
26 (#73), and on October 31, 2012, a "Request for Urgent Entry of
27 Injunctive Relief" (#78). On October 31, 2012, the court entered a
28 temporary restraining order enjoining and restraining Suchard from

1 sending out or transmitting any letters or other forms of
2 communication to oil refineries disclosing EnvTech's proprietary
3 chemical blends and cleaning processes, or other confidential,
4 proprietary, and trade secret information belonging to EnvTech.
5 The court thereafter conducted a telephonic hearing on the Request
6 for immediate injunctive relief (#78) and issued its order granting
7 interim preliminary injunctive relief pending a full hearing on the
8 motion for preliminary injunction (#83).

9 **Factual Background**

10 EnvTech claims to be the "world's primary provider" of
11 chemical cleaning solutions to oil and gas refineries. Controlling
12 80 percent of the market for cleaning and neutralization of "HF
13 Alkylation" units - accounting for 40-60 percent of its business -
14 and with a "significant presence in other types of unit cleaning,"
15 EnvTech bases its success on its proprietary chemical formula and
16 processes that it claims no other company has been able to
17 duplicate. HF Alkylation units are a small part of the overall
18 refinery process, and they are not in all refineries.

19 Suchard is an Israeli citizen and former EnvTech employee.
20 Prior to working for EnvTech from 2005 to 2011, Suchard spent seven
21 years in the oil and gas refinery business.

22 Suchard's job responsibilities at EnvTech included visiting
23 clients, pitching work, and overseeing the cleaning processes, and
24 he had access to EnvTech's proprietary chemical formula and
25 cleaning process. Suchard asserts that the vast majority of his
26 time was spent in chemical cleaning of HF Alkylation units. While
27 Suchard admits he cleaned other types of units, he claims he did so
28 only a few times and was not in charge of those projects. EnvTech,

1 however, produced evidence demonstrating that Suchard was also
2 involved in drafting proposals for decontamination of heat
3 exchangers, vapor phase cleaning unrelated to HF Alkylation, and
4 cleaning of vacuum towers, crude oil units, crude oil exchangers,
5 desalters, FCC Units, and heavy oil units. (Pl. Reply to Mot.
6 Prelim. Inj. Exs. 4, 7-8; Suchard Decl. in Support of Removal ¶ 3).

7 As part of his employment, Suchard signed an at-will
8 employment agreement ("EA") and a "Trade Secrets and
9 Non-Competition Agreement" ("TSNCA"). The agreements required
10 Suchard to maintain the confidentiality of EnvTech's trade secrets
11 and proprietary information, to not compete against it, and to not
12 solicit EnvTech clients.

13 Suchard was terminated from EnvTech in May 2011. While still
14 employed by EnvTech, and after his termination up to the present
15 time, Suchard allegedly used and is using EnvTech's confidential
16 and proprietary information to compete against it, including
17 soliciting EnvTech's clients and creating two competing businesses.
18 Suchard does not deny that he has created oil and refinery cleaning
19 businesses, but denies that they compete with EnvTech, denies that
20 he has done any work for EnvTech clients, and denies using any of
21 EnvTech's confidential and trade secret information.

22 **Preliminary Injunction Standard**

23 "An injunction is a matter of equitable discretion and is an
24 extraordinary remedy that may only be awarded upon a clear showing
25 that the plaintiff is entitled to such relief." *Earth Island Inst.*
26 *v. Carlton*, 626 F.3d 462, 469 (9th Cir. 2010) (internal quotation
27 marks omitted).

28 To obtain a preliminary injunction, EnvTech must show: (1) it

1 will probably prevail on the merits; (2) it will likely suffer
2 irreparable injury if relief is denied; (3) the balance of equities
3 tips in its favor; and (4) an injunction is in the public interest.
4 *Winter v. Natural Res. Defense Council, Inc.*, 555 U.S. 7, 129 S.
5 Ct. 365, 374 (2008).

6 Alternatively, an injunction may issue under the "sliding
7 scale" approach if there are serious questions going to the merits
8 and the balance of hardships tips sharply in EnvTech's favor, so
9 long as EnvTech still shows a likelihood of irreparable injury and
10 that an injunction is in the public interest. *Alliance for the*
11 *Wild Rockies v. Cottrell*, 632 F.3d 1127, 1135 (9th Cir. 2011).
12 "Serious questions are those which cannot be resolved one way or
13 the other at the hearing on the injunction." *Bernhardt v. Los*
14 *Angeles County*, 339 F.3d 920, 926-27 (9th Cir. 2003) (internal
15 quotation marks omitted) (citing *Republic of the Philippines v.*
16 *Marcos*, 862 F.2d 1355, 1362 (9th Cir. 1988)). They "need not
17 promise a certainty of success, nor even present a probability of
18 success, but must involve a 'fair chance of success on the
19 merits.'" *Marcos*, 862 F.2d at 1362.

20 **I. Likelihood of Success/Serious Questions**

21 While employed by EnvTech, Suchard signed agreements to not
22 disclose EnvTech's confidential, proprietary, and trade secret
23 information, (TSNCA §§ 1.3, 1.4, 1.6, 1.7; EA ¶ 18), and to not
24 "engage or participate in any competitive activity relating to the
25 subject matter of his ... hiring by" EnvTech, (TSNCA § 1.8). A
26 review of the record indicates that these agreements are likely
27 enforceable. At this juncture, Suchard has failed to establish
28 that the EA and TSNCA were signed in bad faith to avoid application

1 of California law, that Nevada lacks a substantial relationship to
2 the agreements, or that the agreements are contrary to Nevada
3 public policy. Applying Nevada law, as selected by the agreements,
4 the court concludes the noncompete and trade secret provisions
5 contained in the TSNCA are likely enforceable, and the noncompete,
6 trade secret, and nonsolicitation agreements in the EA are likely
7 enforceable if modified as follows. The EA noncompete provision
8 barring Suchard from providing any service to any EnvTech client is
9 too broad to be enforceable; the scope must be limited to acts that
10 compete with EnvTech in a manner related to the work Suchard
11 performed for EnvTech. The nonsolicitation provision must be
12 modified in a similar way, to prevent Suchard from soliciting
13 EnvTech business associates to do business related to work Suchard
14 performed for EnvTech. Finally, the duration of the EA trade
15 secret provision must be limited to a definable term.

16 The record also indicates that Suchard is likely violating the
17 enforceable agreements. The evidence establishes that, both during
18 and after his employment with EnvTech, Suchard solicited EnvTech
19 clients and associates with respect to services that compete with
20 EnvTech and relate to work Suchard performed for EnvTech. Suchard
21 does not deny that he has established entities that engage in the
22 oil and gas refinery cleaning business, though he denies that they
23 directly compete with EnvTech because they do not engage in
24 cleaning of HF Alkylation units and because his technologies are
25 different from EnvTech's. Whether Suchard has engaged in cleaning
26 and decontamination of HF Alkylation units - and there is evidence
27 in the record that he has at least attempted to do so - is not
28 particularly relevant. Competition with EnvTech can encompass more

1 than just cleaning HF Alkylation units, and Suchard has clearly
2 engaged or attempted to engage in other types of cleaning,
3 including heavy oil and vapor phase, which he was involved in while
4 employed by EnvTech and which competes with EnvTech. Similarly,
5 competition with EnvTech is not limited to competition using the
6 same technologies and processes. Even assuming Suchard's
7 technologies differ from EnvTech's, he is competing with EnvTech if
8 he attempts to clean and/or decontaminate the same units in oil and
9 gas refineries that EnvTech cleans and decontaminates.

10 Recent filings by EnvTech present evidence demonstrating
11 threats by Suchard to immediately disclose confidential,
12 proprietary and trade secret information belonging to EnvTech to at
13 least 100 refineries. In addition, the record contains persuasive
14 evidence that Suchard has engaged and continues to engage in
15 competitive activities relating to the subject matter of his hiring
16 - that is, Suchard is competing or attempting to compete with
17 EnvTech in the cleaning of oil and gas refinery units.
18 Significantly, while employed by EnvTech, he cleaned and/or drafted
19 proposals for cleaning for several different types of units.
20 Accordingly, pending further order of the court, the court
21 concludes that EnvTech has shown at least serious questions going
22 to, if not a likelihood of success on, the merits of its claim that
23 Suchard is violating his employment agreements.

24 **II. Likelihood of Irreparable Harm**

25 The disclosure of confidential trade secret information would
26 cause immediate and irreparable harm to EnvTech. Further, given
27 the evidence of Suchard's conduct, the court also concludes that
28 Suchard's competitive activities threaten to undermine EnvTech's

1 goodwill and market share and would also therefore result in
2 irreparable harm.

3 **III. Balance of Hardships**

4 EnvTech's potential loss of confidential, proprietary, and
5 trade secret information and of market share greatly outweighs
6 Suchard's inability to work in the field of oil and gas refinery
7 cleaning insofar as it relates to work he performed for EnvTech,
8 particularly in light of the most recent filing reflecting efforts
9 by Suchard to disclose confidential, proprietary and trade secret
10 information that belongs to EnvTech. Accordingly, the court finds
11 the balance of hardships tips in EnvTech's favor.

12 **IV. Public Interest**

13 "The public interest inquiry primarily addresses impact on
14 non-parties rather than parties." *Sammartano v. First Judicial*
15 *Dist. Court*, 303 F.3d 959, 974 (9th Cir. 2002). The nonparties
16 potentially impacted by an injunction would be clients and
17 potential clients of EnvTech and Suchard. Those clients would have
18 fewer options for chemical cleaning and may have to pay more for
19 such services. On the other hand, the businesses that provide
20 chemical cleaning services exist and are able to thrive in part
21 because of trade secret protection. Failure to protect trade
22 secrets would greatly undermine EnvTech's business, would
23 discourage innovation in the field, and could eventually reduce the
24 number of businesses engaged in the cleaning of oil and gas
25 refineries. On balance, the court concludes that the public
26 interest favors the protection of EnvTech's confidential and trade
27 secret information and therefore favors the issuance of a
28 preliminary injunction.

Conclusion

EnvTech has shown a likelihood of success on, or at the very least serious questions going to, the merits of its contractual claims, that it faces likely irreparable harm in the absence of an injunction, that the balance of hardships tips sharply in its favor, and that the public interest favors an injunction. Accordingly, a preliminary injunction is properly issued pending further order of the court. Accordingly, pursuant to Federal Rule of Civil Procedure 65 the court hereby reconfirms its preliminary injunction of November 1, 2012 as herein modified, and the defendant and the defendant's agents, assigns, and affiliates are restrained and enjoined from the following:

1. Using in any way, or disclosing to anyone, any of EnvTech's confidential and proprietary information and trade secrets, including but not limited to EnvTech's strategic planning information, the chemical formulas it has developed to service its customers, identities or information on its customers including attributes and preferences, and the unique processes and procedures EnvTech has developed to service its customers;
2. Sending out or transmitting any letters or other forms of communication to oil refineries stating that EnvTech's chemicals contain unspecified carcinogens;
3. Holding himself out to anyone as affiliated with EnvTech or use EnvTech's name, trademarks, literature or documents for any purpose whatsoever;
4. Engaging in any type of chemical cleaning business related to activities Suchard participated in while

1 employed by EnvTech, for a period not to exceed two years
2 or until further order of the court, including:

- 3 a. HF Alkylation Unit Cleaning;
4 b. Decontamination of Heat Exchangers;
5 c. Cleaning of Vacuum Towers;
6 d. Cleaning of Crude Oil Units;
7 e. Cleaning of Crude Oil Exchangers;
8 f. Cleaning of Desalters;
9 g. Cleaning of FCC Units;
10 h. Vapor Phase Cleaning;
11 i. Cleaning of Heavy Oil Units; and

12 5. Soliciting or encouraging any person or entity with whom
13 EnvTech has done business while Suchard was employed with
14 EnvTech to cease doing business with EnvTech or to do any
15 business with defendants, that is the business described
16 in paragraph 4 above.

17 The bond previously posted by EnvTech shall apply to this
18 preliminary injunction and is increased to \$50,000.

19 **IT IS SO ORDERED.**

20 DATED: This 29th day of November, 2012.

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23 UNITED STATES DISTRICT JUDGE